85-1275

Supreme Court, U.S.
FILED
JAN 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1985

ROBERT L. YORK

Appellant

v.

DISCIPLINARY COUNSEL

Appellee

On Appeal From The
Supreme Court of Ohio

JURISDICTIONAL STATEMENT

Robert L. York, pro se
1560 State Route 534
Newton Falls, Ohio 44444
(216) 872-0701

Angelo J. Gagliardo,
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175 South Third Street
Columbus, Ohio 43215
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55pp

QUESTIONS PRESENTED

1. Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio which fails:
   (a) to set forth that an accusation of professional misconduct is untrue until proven to be true, or,
   (b) to place the burden of proving the truth of the accusation upon the Relator, or,
   (c) to set forth the standard of proof which must be shown by the evidence prior to a finding by the hearing panel that the accusation is true,

fails to provide due process guaranteed to the accused lawyer by the Fourteenth Amendment to the Constitution of the United States.

2. Bank records of a lawyer which are obtained by the Disciplinary Counsel through alteration of a Subpoena not authorized by Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio are not admissible into evidence in a disciplinary proceeding of the lawyer.

3. A proceeding for the discipline of a lawyer which is not initiated and conducted in accordance with Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio deprives the accused lawyer of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
THE QUESTIONS ARE SUBSTANTIAL	10
PETITION FOR CERTIORARI	16
PROOF OF SERVICE	17 18
APPENDIX	19
OPINION BELOW	
JUDGMENT BELOW	
NOTICE OF APPEAL	
REQUEST FOR CERTIFICATION	
RULE V, SUPREME COURT OF OHIO ..	

TABLE OF AUTHORITIES

PAGE

DISCIPLINARY COUNSEL v. HILLER, 5 OS3d 237, 450 NE2d 1157 (1983) ... 16

ELDER v. BOARD OF MEDICAL EXAMINERS, 241 Cal App2d 246, 50 Cal Rptr 304 (1966) cert den 385 US 1001 (1967) . 13, 14

ERDMANN v. STEVENS, 458 F2d 1205 (2nd Cir., 1972) cert den 409 US 889 (1972) 11

JOHNSON v. AVERY, 393 US 483, 89 SCt 747, 21 L Ed2d 718 (1969) 11

LANGLEY, IN RE, 230 Or 319, 370 P2d 228 (1962) 13

ONE PLYMOUTH SEDAN v. PENNSYLVANIA, 380 US 693, 85 SCt 1246, 14 L Ed2d 170 (1965) 12, 14

RUFFALO, IN RE, 390 US 544, 88 SCt 1222, 20 L Ed2d 117 reh den 391 US 961 (1968) 11, 13, 14

SCHWARE v. BOARD OF BAR EXAMINERS, 353 US 232, 77 SCt 752, 1 L Ed2d 796 (1957) 11

SMITH v. KATES, 46 OS2d 263, 348 NE2d 320 (1976) 16

SPEVACK v. KLEIN, 385 US 511, 87 SCt 625, 17 L Ed2d 574 (1967) 11

WONG SUN v. UNITED STATES, 371 US 471, 83 SCt 407, 9 L Ed2d 441 (1963) 12

PAGE

UNITED STATES CONSTITUTION:

AMENDMENT 14 2

STATUTES:

RULE V, SUPREME COURT OF OHIO 2

OPINION BELOW

The official report of the Opinion of the Supreme Court of Ohio is set forth at 19 OS3d 150 (1985).

JURISDICTION

This matter is before the Court upon appeal of the Judgment of the Supreme Court of Ohio rendered on October 9, 1985, ordering that Appellant be indefinitely suspended from the practice of law. A Notice of Appeal of said Judgment to this Court was filed in the Supreme Court of Ohio on January 6, 1986.

The jurisdiction of this Court is invoked under the provisions of 28 USC §1257(2) which provides jurisdiction in this Court for appeal of a judgment of the highest state court where the validity of a state statute has been drawn in question as repugnant to federal law and the state court finds the state statute is valid.

STATUTES INVOLVED

Constitutional Provisions

Amend. 14, Sec. 1, U. S. Constitution:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes

Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio is set forth at 5 OS3d xxxix and included in the Appendix hereto.

STATEMENT OF THE CASE

This matter originated in September of 1982 by the filing of a complaint by Ingrid Kalany with the Grievance Committee of the Trumbull County, Ohio, Bar Association alleging that Appellant had misappropriated funds withheld from her for the payment of future real estate taxes as part of the closing of the sale of real estate which occurred in September of 1981.

The following events, all of which are contrary to the provisions of Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio, occurred.

Having received the Kalany complaint from the Trumbull County Bar Association for investigation and report back to said bar association, the Disicplinary Counsel of the Supreme Court of Ohio failed to report back to said bar association, and, instead retained the complaint in the Office of the Disciplinary Counsel and took action thereon without the knowledge or approval of said bar association.

On March 28, 1983, more than sixty days after the complaint was filed, the Disciplinary Counsel obtained a Subpoena Duces Tecum for the deposition of a bank officer and the production of part of Appellant's bank records "as soon as possible" and failed to give notice of the taking of said deposition to Appellant.

An employee of the Office of the Disciplinary Counsel altered said Subpoena Duces Tecum to include Appellant's bank records during a period of time which had no relevance to the Kalany complaint being investigated by the Disciplinary Counsel and obtained said records.

The Disciplinary Counsel, rather than the Trumbull County Bar Association, filed a formal Complaint against Appellant involving the Kalany transaction and, based upon matters disclosed by Appellant's bank records which were obtained under the altered Subpoena, also filed a formal Complaint against Appellant involving an Izzo transaction, after having been assured by the members of the Izzo family that they were satisfied with Appellant's conduct and would not participate in the filing of a complaint against Appellant.

Appellant was denied the right to discovery through the taking of the deposition of the employee in the Office of the Disciplinary Counsel who had signed the formal Complaint against Appellant.

On Sunday, December 18, 1983, the Disciplinary Counsel advised Appellant by telephone that the hearing upon the formal Complaint which had been set for hearing in Warren, Ohio, on Tuesday, December 20, 1983, would be held upon the same date at the Office of the Disciplinary Counsel in Columbus, Ohio, some 175 miles from Warren.

On December 20, 1983, a formal hearing was held in Columbus, Ohio, during which Appellant was without counsel and witnesses on his behalf, and was not permitted to introduce any evidence in defense of the Complaint, including evidence of federal constitutional claims.

On February 21, 1984, in order to avoid the hearing scheduled upon Appellant's Motion For A Temporary Restraining Order then pending in the District Court for the Southern District of Ohio, Eastern Division, Attorneys for the Disciplinary Counsel and members of the Supreme Court of Ohio represented to Judge John D. Holschuh that the Court would provide Appellant with a second hearing upon the formal Complaint during which Appellant would be permitted to introduce evidence of federal constitutional claims for later determination by the Supreme Court of Ohio, and on that basis Judge Holschuh withheld injunctive relief under the doctrine of abstention.

On March 16, 1984, all three members of the hearing panel which had conducted the formal hearing upon the Complaint held on December 20, 1983, resigned from the panel, without submitting findings of

fact and recommendations, or its certified report of proceedings before it, to the Board of Commissioners on Grievances and Discipline.

On August 15, 1984, a second formal hearing was held before a three-member panel, no one of which was a member of the panel at the first formal hearing.

The second hearing panel made findings of fact and recommendations regarding the formal Complaint against Appellant which were substantially that Appellant had committed no misconduct in the handling of the Kalany transaction, but had engaged in the practice of law during a former one-year suspension and had submitted an Affidavit to the Disciplinary Counsel which contained statements which were not true, and that Appellant had committed misconduct in the handling of funds in the Izzo transaction. The findings of fact by the hearing panel

were adopted by the Board of Commissioners which recommended that Appellant be indefinitely suspended from the practice of law.

The questions sought to be reviewed herein were raised at each stage of the disciplinary proceeding through Motions prior to the formal hearing upon the Complaint, evidence and argument presented during the formal hearing, Appellant's Brief before the Board of Commissioners, and Appellant's Objections To The Findings Of The Board Of Commissioners before the Supreme Court of Ohio.

However, contrary to the representation made to Judge Holschuh on February 21, 1984, in its opinion rendered in the disciplinary proceeding on October 9, 1985, the Supreme Court of Ohio discussed neither the federal constitutional claims which Appellant had raised before the Court nor the manner in which such questions were passed upon by the Court.

A Request For Certification Of Constitutional Questions was filed in the Supreme Court of Ohio on January 6, 1986, and is included in the Appendix hereto.

THE QUESTIONS ARE SUBSTANTIAL

The questions presented herein are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution, for the following reasons:

1. Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio as it presently exists, and more specifically as purportedly applied in the case of the initiation, investigation and conduct of the disciplinary proceeding against Appellant, fails to provide the due process of law that this Court held must be provided by a state in its regulation of the practice of law. For example:

A state cannot exclude a person from the practice of law in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment. Schware v. Board of Bar Examiners, 353 US 232, 77 SCt 752, 1 L Ed2d 796 (1957).

A proceeding to suspend a license to practice law must comport with the requirements of due process of law. Spevack v. Klein, 385 US 511, 87 SCt 625, 17 L Ed2d 574 (1967); In re Ruffalo, 390 US 544, 88 SCt 1222, 20 L Ed2d 117 (1968).

A state's power to control the practice of law cannot be exercised to abrogate federally protected rights. Johnson v. Avery, 393 US 483, 89 SCt 747, 21 L Ed2d 718 (1969).

A state court may neither act arbitrarily with respect to those licensed by it nor otherwise violate their constitutional rights. Erdmann v. Stevens, 458 F2d 1205

(2nd Cir., 1972) cert den 409 US 889, 93 SCt 126, 34 L Ed2d 147 (1972).

2. This Court has previously held the following regarding the admissibility of evidence obtained through unlawful means:

> Where law enforcement officers act illegally, evidence which would not inevitably have been discovered, which is obtained by exploitation of that illegality, rather than by means sufficiently distinguished to be purged of the primary taint, is "fruit of the poisonous tree", and inadmissible in a criminal proceeding. Wong Sun v. United States, 371 US 471, 83 SCt 407, 9 L Ed2d 441 (1963).

The constitutional rule requiring the exclusion of evidence obtained through an unreasonable search and seizure is applicable in state proceedings which are quasi-criminal in nature. One Plymouth Sedan v. Pennsylvania, 380 US 693, 85 SCt 1246, 14 L Ed2d 170 (1965).

This Court has also held that disbarment proceedings are adversary proceedings of a quasi-criminal nature. In re Ruffalo, 390 US 544, 88 SCt 1222, 20 L Ed2d 117 but has never specifically decided whether or not the exclusionary rule has application in lawy disciplinary proceedings.

The Supreme Court of Oregon has held that evidence obtained in violation of statute is not admissible in a lawyer's disciplinary proceeding, In re Langley, 230 Or 319, 370 P2d 228 (1962), and this Court denied certiorari in Elder v. Board of Medical Examiners, 385 US 1001, 87 SCt 701, 17 L Ed2d 541 (1967), to review the holding of the California state court that the rule excluding illegally seized evidence applies to an administrative hearing contemplating the deprivation of a professional license since that license constitutes a property right. 241 Cal App2d 246, 50 Cal Rptr 304 (1966).

As a result of this Court's holding in Ruffalo and One Plymouth Sedan, supra, and the denial of certiorari in Elder, there is a reasonable basis to conclude that upon being directly presented with the question of whether or not the exclusionary rule applies in lawyer disciplinary proceedings, this Court will hold that evidence obtained contrary to law may not be introduced in such quasi-criminal proceeding; however, until such question is directly addressed by the Court a substantial question exists regarding the position of the Court upon the application of the exclusionary rule in proceedings which are not totally criminal in nature.

3. A further substantial question presently exists as a result of the failure of Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar to set forth a standard of proof to be employed by the hearing panel and Board of Commissioners or to place the burden of proof upon the Relator as to whether or not said Rule can possibly provide the due process of law guaranteed by the Fourteenth Amendment to a lawyer accused of professional misconduct. This question is made more serious by the result of such failure in the case of Appellant, where the findings of fact by the Board of Commissioners were stated in terms of what the Board "felt" or "believed" or, in some instances, were based upon the failure of the Appellant to present evidence to disprove the allegation stated in the Complaint.

4. And lastly, a substantial question exists as to whether a lawyer accused of professional misconduct can ever be assured of due process in a disciplinary proceeding in view of the failure of the Supreme Court of Ohio to recognize and follow its own holdings in Smith v. Kates, 46 OS2d 263, 348 NE2d 320 (1976); and Disciplinary Counsel v. Hiller, 5 OS3d 237, 450 NE2d 1157 (1983); to the effect that any disciplinary procedure which is not in strict compliance with Rule V is without authority and must be disregarded.

PETITION FOR CERTIORARI

Appellant hereby requests that, in the event this Court finds that this appeal is improvidently taken, the Court treat this Jurisdictional Statement as a Petition For Certiorari, pursuant to 28 USC §2103.

Respectfully submitted,

Robert L. York, Appellant

PROOF OF SERVICE

I hereby certify that on the 6th day f January, 1986, I served a copy of the oregoing Jurisdictional Statement upon he Office of the Disciplinary Counsel, 75 South Third Street, Suite 280, olumbus, Ohio 43215, by personally anding said copy to Angelo J. Gagliardo, Disciplinary Counsel, or to an employee therein.

Robert L. York, Appellant

PROOF OF SERVICE

I hereby certify that on the 27th day of January, 1986, I served three copies of the foregoing Jurisdictional Statement in compliance with Rule 33 of the Supreme Court of the United States upon the Office of the Disciplinary Counsel, 175 South Third Street, Suite 280, Columbus, Ohio 43215, by overnight Federal Express.

Robert L. York

Robert L. York, Appellant

APPENDIX

SUPREME COURT, JANUARY TERM, 1985

Statement of the Case

OFFICE OF DISCIPLINARY COUNSEL v. YORK

Cite as Disciplinary Counsel v. York (1985), 19 Ohio St. 3d 150

Attorneys at law-Misconduct-Indefinite Suspension-Violation of previous one-year suspension-Unauthorized practice of law.

D.D. No. 85-13-Decided October 9, 1975

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Bar.

On May 11, 1983, the Office of Disciplinary Counsel, relator herein, filed a six-count complaint with the Board of Commissioners on Grievances and Discipline against Robert L. York, respondent. Each count of the complaint stems from Respondent's conduct in connection with a real estate closing held on September 16, 1981.

In Count I, relator alleged that respondent violated DR 1-102(A)(3)(4) and (6), 6-101, 7-101(A), 9-102(A)(B)(3) and (4) by misusing portions of funds entrusted to him, resulting from the sale of real property, for his own benefit and to the detriment of others.

The relator alleged in Count II that respondent, while suspended from the practice of law for one year, served as an escrow agent for both the sellers and buyers in a real estate closing, deposited funds in his "Escrow Account," failed to distribute these funds in accordance with the instructions on the closing statements, and converted portions to his own use, constituting violations of DR 1-102(A)(4) and (6), 9-102(A), (B)(3) and (4).

It was alleged in Count III that respondent, by acting as an escrow agent at said closing also engaged in the unauthorized practice of law in violation

of the Supreme Court order of June 24, 1981, in that respondent charged an escrow fee and a fee from the title company for performing title work in violation of DR 1-102(A)(5) and (6).

Relator alleged in Count IV that respondent maintained attorney-at-law escrow account No. 20338320 from January 1, 1981, through October 1981; that for a portion of this time, respondent was not entitled to engage in the practice of law; that on four occasions, checks were not honored by the bank due to insufficiency of funds; and that on one occasion the account was overdrawn. Relator alleged that respondent's conduct in handling client's monies constituted a violation of DR 1-102(A)(3), (4) and (6), 9-102(A), (B)(3) and (4).

Lack of recordkeeping in violation of DR 1-102(A)(6), 9-102(B)(2) and (3) was charged in Count V based on respondent's alleged inability to produce records of his handling of funds and property of a client.

In Count VI, relator alleged that respondent, in the course of the investigation pertaining to his conduct herein, forwarded to relator an affidavit which was false and in violation of DR 1-102(A)(4), (5) and (6) and the Attorneys' Oath of Office.

A hearing was held on August 15, 1984. Respondent was questioned by relator's counsel regarding the escrow account which was the subject of the various counts of the complaint.

Based on the evidence adduced at the earing, the board found that, with espect to Count I, respondent violated R 9-102(A), (B)(3) and (4). The board oncluded that $16,107.70 had been ntrusted to respondent and that respond- ent drew from the trust account at least $3,600 for his own personal use which resulted in the rejection of checks which had been written to two interested parties.

Finding that the relator failed to sustain its burden with respect to Count II, the count was dismissed by the board.

Pursuant to Count III, the board found that the evidence indicated that respondent's conduct at the real estate closing constituted an unauthorized practice of law in violation of the June 24, 1981, court order suspending respondent from the practice of law. The board noted respondent's use of his

attorney-at-law escrow account, the past attorney-client relationship which he had had with one of the parties and his failure to disclose that he was under suspension, and the minimal involvement of another attorney in the real estate transaction. Resultantly, the board concluded that respondent had violated DR 1-102(A)(5). The board, however, did not find a violation of DR 1-102(A)(6).

The board dismissed Count IV based on insufficiency of evidence in the record.

Citing two particular instances and respondent's inability to produce records of his handling of client's funds and his failure to properly identify the properties of his clients, the board concluded that respondent's lack of recordkeeping constituted a violation of DR 9-102(B)(2) and (3) but not DR 1-102(A)(6), and dismissed the latter charge as it related to Count V.

Finally, the board, finding that an affidavit attested to by respondent on May 3, 1983, in which he explained his conduct at the real estate closing contained falsehoods regarding the payment of taxes, determined that the relator had established a violation of DR 1-102(A)(4), (5) and (6) with regard to Count VI.

Pursuant to Gov. Bar R. V, the board adopted the findings of fact and conclusions of law of the panel and recommended that the respondent be indefinitely suspended from the practice of law.

Angelo J. Gagliardo, disciplinary counsel, and Mark H. Aultman, for relator.

W. Leo Keating and Daniel G. Keating, for respondent.

Per Curiam. Having reviewed the record and the findings of fact and conclusions of law of the board, this court determines that there are ample fact to justify the board's findings that respond-

ent violated DR 9-102(A), (B)(2), (3) and (4), and 1-102 (A) (4), (5) and (6).

In addition, it is undisputed that respondent was previously suspended from the practice of law on June 24, 1981 for a period of one year. (Bar Assn. v. York 1981, 66 Ohio St. 2d 485, 20 O.O.3d 404). Gov. Bar R. V(7) provides in pertinent part: "... A person who has been suspended for a period of one year from the practice of law, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct."

Accordingly, it is the judgment of this court that respondent be indefinitely suspended from the practice of law, and it is so ordered. Judgment accordingly.

Celebrezze, C.J., Sweeney, Locher, Holmes, C. Brown, Douglas and Wright, JJ. concur.

THE SUPREME COURT OF OHIO

COLUMBUS

Disciplinary Counsel,

Relator

v.

Robert L. York,

Respondent.

1985 TERM

To Wit: October 9, 1985

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE BAR

DD85-13

O R D E R

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on April 16, 1985, recommending that the respondent, Robert L. York, be indefinitely suspended from the practice of law pursuant to Rule V, Section 6(b) of the Supreme Court Rules for the Government of

the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was heard by the court. On consideration thereof, it is ordered and adjudged by this court that respondent, Robert L. York, be indefinitely suspended from the practice of law pursuant to Rule V, Section 6 (b) of the Supreme Court Rules for the Government of the Bar of Ohio.

The respondent, Robert L. York, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he is forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services, and he is hereby divested of each, any and all of

ne rights, privileges and prerogatives ustomarily accorded to a member in ood standing of the legal profession f Ohio.

It is further ordered that the espondent, Robert L. York, surrender is certificate of admission to practice o the Clerk of this Court forthwith and hat his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the the respondent, Robert L. York, pay the costs of these proceedings taxed in the amount of Two Thousand Six Hundred Seventy-Seven Dollars ($2,677.00) on or before November 12, 1985.

****

It is further ordered that the Clerk of this Court issue certified copies of this order as provided for in Section 20 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED:

S/ FRANK D. CELEBREZZE
FRANK D. CELEBREZZE, Chief Justice

I, James Wm Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 9th day of October, 1985.

JAMES WM. KELLY CLERK

S/ JOSEPH N. ROSENTHAL DEPUTY

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL
Relator

v.

ROBERT L. YORK
Respondent

No. DD 85-13

NOTICE OF APPEAL

Pursuant to 28 USC §1257(2), Respondent hereby appeals to the Supreme Court of the United States from the Judgment rendered herein on October 9, 1985, ordering the indefinite suspension of Respondent from the practice of law.

S/ ROBERT L. YORK
Robert L. York, Respondent

FILED CO.
JAN-6 1986
SUPREME COURT OF OHIO
James Wm. Kelly, Clerk

PROOF OF SERVICE

I hereby certify that on the 6th day of January, 1986, I served a copy of the foregoing Notice of Appeal upon the Office of the Disciplinary Counsel, 175 South Third Street, Suite 280, Columbus, Ohio 43215, by personally handing said copy to Angelo J. Gagliardo, Disciplinary Counsel, or to an employee therein.

S/ ROBERT L. YORK
Robert L. York, Respondent

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL
Relator

v.

ROBERT L. YORK
Respondent

No. DD 85-13

REQUEST FOR CERTIFICATION OF CONSTITUTIONAL QUESTIONS

Respondent hereby requests that this Court certify to the Supreme Court of the United States the federal constitutional questions raised by the Respondent herein and the manner in which they were passed upon by this Court.

S/ ROBERT L. YORK
Robert L. York, Respondent

FILED CO.
JAN-6 1986
SUPREME COURT OF OHIO
James Wm. Kelly, Clerk

PROOF OF SERVICE

I hereby certify that on the 6th day of January, 1986, I served a copy of the foregoing Request For Certification of Constitutional Questions upon the Office of Disciplinary Counsel, 175 South Third Street, Suite 280, Columbus, Ohio 43215, by personally handing said copy to Angelo J. Gagliardo, Disciplinary Counsel, or to an employee therein.

S/ ROBERT L. YORK
Robert L. York, Respondent

AMENDMENTS TO THE SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO

The Supreme Court Rules for the Government of the Bar of Ohio were amended, and re-adopted as amended, effective July 1, 1983, as follows:

****

RULE V

DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective July 1, 1983, and shall apply to all pending cases.

****

(3) REFERRAL FOR INVESTIGATION.

... In the event that a Grievance Committee of a local bar association determines in the course of a disciplinary investigation that the matters of alleged misconduct under investigation are sufficiently serious and complex as to require the assistance of the Disciplinary Counsel, the Chairman of the Grievance Committee of the local bar association may direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all such matters referred to him and report the results of the investigation to the committee which requested it.

****

(4) APPLICATION OF RULE; AUTHORITY AND DUTY OF BAR COMMITTEES AND DISCIPLINARY COUNSEL. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law; all proceedings for the discipline of such attorneys and counselors at law, and persons under suspension or disbarred from the practice of law; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Disciplinary Counsel and any committee authorized by any regularly organized local bar association shall investigate any matter referred to them or which comes to their attention, and may cause a complaint to be filed pursuant to this rule in cases where they find reasonable

cause to believe that misconduct has occurred or that a condition of mental illness exists.

****

The investigation of complaints shall be concluded within sixty days from the date of the receipt of the complaint. A decision as to the disposition of such complaint shall be made within thirty days thereafter. Extensions of time for completion of the investigation may be granted upon written request, and for good cause shown, by the Secretary or Acting Secretary, of the Board of Commissioners on Grievances and Discipline of the Bar. If the investigation is not completed within sixty days from the date of filing of the complaint and no written request has been made for an extension of time, the matter under investigation shall be referred to the Disciplinary Counsel. No extension of time shall be granted beyond

one-hundred-fifty days from the date of receipt of the complaint. If an investigation by the Grievance Committee of a local bar association is not completed within one-hundred-fifty days from the date of filing the complaint, the matter under investigation shall be referred to the Disciplinary Counsel.

****

(5) DEFINITIONS. (a) MISCONDUCT. Misconduct shall mean any violation by an attorney of any provision of the oath of office taken upon admission to the practice of law in this State or any violation of the Code of Professional Responsibility as adopted by the Court from time to time, disobedience of these rules or of the terms of an order imposing a suspension from the practice of law, or the commission or conviction of a crime involving moral turpitude.

****

(9) THE COMPLAINT; WHERE FILED; BY WHOM SIGNED. A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board.

(10) DUTY OF THE BOARD UPON FILING OF THE COMPLAINT. (a) NOTICE TO RESPONDENT. The Secretary of the Board of Commissioners shall send a copy of the complaint by certified mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint. Extensions of time for the filing of the answer may be granted, for good cause shown, by the Secretary of the Board of Commissioners.

****

(11) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Secretary of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes. Requests for continuances may be granted by the Chairman of the panel for good cause shown.

****

(12) AUTHORITY OF PANEL; DISMISSAL. If the panel finds that the complaint or evidence is insufficient to support a charge of misconduct the panel may order that the complaint be dismissed. Such action shall be reported to the Secretary of the Board of Commissioners who shall give written notice of the action taken to the Board of Commissioners, the Respondent, all counsel of record, Disciplinary Counsel, and the local bar association or associations of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

(13) REFERRAL BY PANEL. In the alternative, if the panel determines that findings of fact and recommendations for dismissal should be referred to the Board of Commissioners for review and action by the full Board, the panel may submit its findings of fact to the Board of Commis-

sioners and may recommend dismissal in the same manner as provided in the following sections of this Rule V with respect to public reprimand, suspension or disbarment.

(14) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for a period of one year, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(15) REVIEW BY ENTIRE BOARD OF COMMISSIONERS. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the complaint is dismissed, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice of the complaint had been dismissed by the panel that heard the matter.

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(33) POWER TO ISSUE SUBPOENAS. In investigations and proceedings under this rule, upon application by Disciplinary Counsel, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a complaint under Section (9) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before Disciplinary Counsel or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(34) MAY ORDER DEPOSITIONS. The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

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(36) RULES OF EVIDENCE. All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

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(38) BOARD MAY PRESCRIBE RULES. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(39) RULE TO BE LIBERALLY CONSTRUED. The process and procedure under this rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable time to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularits or for any error not resulting in a miscarriage of justice. This rule and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the courts and the legal profession....

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